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Assessing evictions and expropriations in China: Efficiency, credibility and rights

Eva Pils*

As according to some assessments, some 120 million rural residents as of 2012 have made way for property development projects;¹ and some tens of millions more (at a guess) may count among urban evictees, State expropriation and eviction is an important part of the Chinese law on immoveable property and land tenure. Its importance is further heightened by the fact that, while many evictees are compliant and some reportedly pleased with the process,² an unknown fraction of the unknown total number of rural and urban evictees have been evicted forcibly; and protests against rural land takings are widely thought to be among the most important causes of social unrest in China.³

This paper argues that a persuasive evaluative assessment of China's property regime needs to examine the impact of forced evictions not only on property rights but also on basic rights such as the human right to be protected from forced evictions, and the problem of access to justice in cases of contentious evictions. The argument proceeds in three steps. First, some (neo-liberal) arguments for secure property rights not only inappropriately predict that private property rights (always) serve economic growth, but that they are also based in a simplistic understanding of rights, because they reduce the value of rights to their assumed utility. In fact, the destruction of property rights in the process of urbanisation in China is a good example illustrating that utility-driven justifications of rights are unstable, because such destruction can be persuasively argued to promote economic growth in China.

Second, drawing on fieldwork on urban and rural evictions in China, uses of 'credibility' as a concept 'drawing attention to institutional performance over time and space [i.e. function], rather than to desired form postulated by theory or political conviction' to assess evictions under China's property rights and land tenure system are discussed (Ho, 2014: 15). It is argued that, in addition to assessing 'how actors perceive institutions as a

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¹ Between 1991 and 2005, some three million rural residents a year were thought to have been affected by land takings and demolitions, an estimated total of 50-60 million as of 2007. Yu (2009: 122). More recent statements mention a current number of rural evictees of ca 120 million, adducing various government statistics, as the 'most conservative estimate.' Boxun (2012). No information has been made publicly available on the number of urban residents affected by building demolitions.

² Cp. E.g. CJYI Net (2010), mentioning Beijingers '...who are dressed modestly and who behave with restraint ...[but] may well be already worth a million and own several properties – those are the 'demolition billionaires' who got rich through demolition and relocation...'.

³ Hou Liqiang: 2014 cites pollution, land takings, demolitions, and labour conflicts as primary causes of 'mass incidents.'

jointly shared rule' (an element of the definition of credibility), a comprehensive functional assessment of a system must also consider how it does in terms of preventing and providing redress for potential harm done to individuals when land and buildings are redistributed; and how it deals with situations of conflict and lack of 'shared rules'. These considerations are all the more important considering that, suffering as a consequence of eviction or expropriation might not detract from the system's overall 'credibility,' as defined above.

On this basis, third, the relevance of China's rights-centred discourses of property relations and evictions, and the implications for the credibility thesis is examined. From the explicitly normative perspective taken here, a truly credible system must protect basic rights. Whereas the credibility thesis operates on the basis that "an institution perceived as credible at one given time and location could well be entirely non-credible, thus empty, at another time and location, and vice versa," (Ho, 2014: 15) the present paper argues that credibility is affected by injustice, and that systemic injustice in current Chinese eviction conflicts is best understood and addressed in terms of rights violations. This is not to say that cultural, historical and social context should be ignored. Rather, inevitably, when engaging with Chinese discourse on evictions, we add our views and voices to debates that are not closed off by national borders or the history that has led to these borders' creation.

The three perspectives examined in the following can also be read as interpretive approaches to the legal framework for protecting rights centrally affected by the urbanisation and urban renewal process, and to the legal rules on land use and land governance, as well as on demolition and expropriation of land and buildings. These include the right to own land use rights and (shares in) buildings in accordance with the Constitution, the 2007 Property Rights Law, the 1998 Land Administration Law and other laws and regulations; the rules allowing Chinese citizens, within limits, to engage in private property transactions. They also include the rights of liberty of the person, freedom of expression, and access to justice. Their textual bases include the Constitution, laws and regulations, as well as international human rights treaties, in particular the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, which China has signed but not yet ratified. Within the international framework, the protection of the right against forced evictions (OHCHR, 2010) is of particularly great relevance.

1) The efficiency of China's property institutions in urbanisation contexts

China's economic rise from the ashes of the Mao era has been closely connected to the changes made from the 1980s onward to its property and land administration systems. It was only with the creation of private land use rights, as well as mechanisms allowing the State to take land from current occupants and give new land use rights to developers, that real estate could become the very important economic sector it now is. As noted, the basic framework for this process is established by the PRC Constitution, Property Rights

Law and Land Administration Law. Within the constitutional framework, two fundamentally important provisions reflected in further laws and regulations are Article 10, which states that all land is in public (i.e. State or collective) ownership, but that use rights may be privately held and transferred; and Article 13, which protects private property rights, including private ownership of buildings. According to Article 10 of the Constitution, land is owned by the State in urban areas, and by collectives in rural and suburban areas. Both Article 10 and Article 13 make provision for the expropriation of -- immovable or moveable -- property by the State, stating that

‘The State may, for public interest uses, expropriate or requisition land [Article 10] / private property [Article 13] and make compensation in accordance with the provisions of the law.’ (PRC Constitution, revised 2004).

Further details are regulated by statutory laws and numerous administrative regulations. Property ‘development’ is almost always premised on the granting of urban land use rights to a developer, a private entity, by the urban government representing the land-owning state. Before granting ‘clean’ land to the developer, the state takes that land from its current occupants – technically by a decision to expropriate (*zhengshou*) the collective in rural or suburban contexts, and a decision to ‘demolish and relocate’ (*chaiqian* / *banqian*) in urban contexts. The owners of any privately owned buildings are expropriated (*zhengshou*) in such cases.

Official arguments supporting have supported this system using the familiar languages of classical economic liberal theory and utilitarianism. They have defended the creation of private property rights drawing on classical liberal theorists such as Hayek,⁴ and defended the mechanisms for expropriations, forced evictions, and (re-)distribution of land use rights for the purpose of urban development using efficiency arguments.

Turning first to the argument for strong private property rights, Hayek argues, on the one hand, that ‘constructivist’ attempts by the state to regulate society, especially to intervene in market processes distributing wealth among citizens must fail because of a lack of knowledge on the part of central planners. On the other hand, and this is Hayek’s more centrally political argument, the protection of private rights against public power serves a democratic or liberal purpose, hence state intervention must remain minimalist. In China, this latter line of argument has been advanced, among others, by the political science scholar Liu Junning (Liu, 2000) and the legal scholar Jiang Ping (Jiang, 2011).

Both the efficiency argument and the political argument could be used to justify wealth inequality along conservative, ‘neo-liberal’ lines, since the ‘neo-liberal’ view of property as a legal institution encourages an understanding of law as sets of rules which clearly spell out rights and obligations, and whose operation is morally neutral. Indeed,

⁴ Hayek became popular in China from the (late) 1980s. See e.g. Liu (2000), mentioning as influences on Chinese liberal discourse Wilhelm von Humboldt, Thomas Jefferson, Alexis de Tocqueville, Herbert Spencer, Frederic Bastiat, Ludwig von Mises, Karl Popper, F.A. Hayek, Milton Friedman, James Buchanan, Robert Nozick, Douglass C. North, Michael Novak, Isaiah Berlin, and Ayn Rand.

contemporary scholars attracted to liberal ideas have generally tended to accept inequality as an inevitable consequence of liberty, and been wary of coercive redistribution for the purpose of achieving greater equality. The justifications the academic and political establishment proffered for the revision of the Constitution's Article 13, as well as for the enactment of the 2007 Property Rights Law, largely drew on these ideas. Defending the draft, Professor Yang Lixin, for example, commented as follows.

Please be clear about it, the divide between the poor and the rich is not a problem of the *Property Law*. It is a problem of society itself. The protection of the law has a guiding function; in the sense that if you have one kuai, can't you develop it to ten thousand kuai, or a million kuai? [The property law] encourages people to acquire wealth by legal means. It encourages the poor to earn money. (Law and Life, 2006)⁵

If we took Hayek's political argument for property rights seriously, however, even though we would have to accept unequal distribution of property, the currently vast powers of the Chinese state in allocating and reallocating land and other resources would have to be criticised.⁶ But, these powers were also acknowledged in the 2007 Property Rights Law. Even though its drafters have sought to defend the law using the market efficiency related aspects of Hayek's theory, they have not generally shared Hayek's concern about concentrated state power. Rather, they have regarded evictions, expropriations, and the subsequent redistribution of land, as being in the 'public interest,' and defended the power of the state to take property. From their perspective, both protection and destruction of property rights are connected by virtue of their shared commitment to economic efficiency and welfare. As Chinese law severely limits private transactions concerning land, evictions, housing demolitions and expropriations are necessary to provide 'cleared' land for distribution to property developers acquiring private land use rights; and this is justified by the overall purpose of increasing welfare, at least in the aggregate, excluding harm or loss caused to particular individuals from consideration.⁷

In the later years of former President's Hu Jintao's reign, these arguments became part of the officially propagated 'scientific development perspective.' This is taken to mean a perspective on development that includes growth, but also sustainable development, social welfare, a person-centred society and a harmonious society (Xinhua Net: 2005). Despite such lofty goals, the scientific development perspective appeared to translate into the widely held view that any property development. Importantly, in eviction contexts, it

⁵ Professor Wang Weiguo, similarly, commented that even for beggars, the order created by private property rights was important as the basis for "acting charitably" (China Law Prof Blog, 2003; see also China Youth Daily, 2006).

⁶ In addition, liberalism is also capable of an egalitarian interpretation that emphasises the interdependence of equality and liberty and justifies principles of redistribution, along the lines of John Rawls (Rawls, 1971), Ronald Dworkin (Dworkin, 2002, Chapter 2), and others.

⁷ Kaldor and Hicks have argued that hypothetical compensation can be sufficient to satisfy the efficiency requirement in cases where a transaction or decision leaves one party worse off (Kaldor, 1939:549-52).

is up to the State – whose powers are concentrated, not separated -- to define what serves the general welfare. Hence any eviction or expropriation, has been deemed in the public interest ‘as long as it’s for urban construction’ (Yang Ming, 2012). Along similar, broadly welfare-utilitarian lines, officially approved public interest lawyers have defined justice as the greatest happiness for the greatest number.’ (Tong, 2009: 2)

The line of reasoning adopted here resembles, as numerous commentators have pointed out, that adopted in the 2005 *Kelo v. City of New London* decision. (Chen, 2008, Noble 2009). In the U.S. this decision, it has been argued, led to a significant shift in takings practice, imperilling residents in urban areas officially designated as ‘blighted,’ by accepting the argument that private property development in such areas might be sufficient to meet the requirements of ‘public use’ in accordance with the 5th Amendment to the U.S. Constitution (Alexander and Peñalver 2012: 178-9). In contrast to *Susette Kelo*, however, Chinese residents have little opportunity to bring their complaints before an independent court let alone the highest court in the land; the concept of ‘public interest use’ is not subject to the kind of judicial scrutiny that was available in the *Kelo* decision; and as discussed later on, evictions in China involve routine practices that would be independently challengeable as rights violations in the U.S. legal system.

Notwithstanding attempts to define the meaning of ‘public interest’ more narrowly through regulation (State Council Regulation 2011), the State exhorts citizens to subordinate their goals to that of national construction for the greater welfare of all in the aggregate. It also uses traditional PRC propaganda tools to convey this view. The official slogans used at eviction sites, for example, typically read ‘Thoroughly Implement the Scientific Development Perspective, Build a World City with Chinese Characteristics!’ ‘Support the National Construction Project,’ and ‘Advance in Solidarity, Revive China, Love the Motherland, Build the Motherland!’ and so on. (Billboards, 2013)

The fact of China’s growth and the share of urban development (and construction projects more widely) in this growth suggests that the rules and practices (including hidden rules and practices of circumvention) that have characterised expropriation and eviction from the 1990s until now have contributed to GDP growth. On the other hand, development has, *inter alia*, relied on the protection of newly created property rights. Thus, *both* the State’s readiness to take resources away from original occupants/users, thereby in many cases destroying property rights,⁸ *and* its readiness to protect new private property rights may have contributed to growth; and indeed it has been argued that the current system was designed to serve this wealth-generating purpose.⁹ This conclusion would be in tension with the orthodox neo-liberal narrative on private

⁸ In urban eviction contexts, the 2011 State Council Regulation states that it governs building *expropriations* of buildings on State-owned land. In rural contexts, what is taken is usually collectively owned land. In both contexts, land use rights held individually or held by individual households may be taken as well.

¹⁰ The credibility thesis concedes the importance of protest to credibility assessments, for example, by stating that ‘one might be able to gauge the extent to which institutions are credible or contested, as indicated – among numerous other indicators – by the level, incidence, *and source of generated conflict*.’ (Ho, 2014: 16 and 23, emphasis added).

property widely adopted in the Chinese legal discourse; but it would be consistent with its utilitarian premises which, as seen, purport to justify a certain disregard for the position of the individual vis-à-vis aggregate welfare calculations.

However, both legs of this in essence utilitarian argument depend on the soundness of the assessment that economic growth has actually been helped by the current institutional design and practices surrounding expropriation and eviction. This, in turn, depends on many further empirical questions, including the question how economically efficient the current system can be in the long run. For example, some think that the current system will likely result in or contribute to an economic downturn e.g. in consequence of a bursting (or deflating) property bubble. There are also economic costs to the coercive and corrupt nature of the current system (Zhu, 2012).

In sum, if we consider efficient economic growth as the exclusive goal of a good system, the question if current property and expropriation institutions and practices in China are efficient seems inconclusive. There is a basic tension in the efficiency-based approach, because it would at best support ‘property rights light:’ – rights held as long as they served an overall goal of utility e.g. by encouraging the poor to make money (or the rich, for that matter), but not actually defensible if it ceased to do so. It is also not clear why efficient economic growth should be the exclusive goal of the system in the first place. This view would be open to objections like those advanced by John Rawls, who points out that utilitarian efficiency considerations may require one to set aside – or prevent one from understanding – injustice done to individuals. The political argument for property rights developed by Hayek, Locke and others – the argument that property rights serve to protect political liberty -- might be more successful than the efficiency argument; but the Chinese system is at best inconsistent in its support for this argument, since it hinges so much on coercive measures such as expropriation and eviction to redistribute property. The coercive nature of these processes and related issues are discussed in the following from the perspectives of the credibility thesis and from a rights perspective.

2) *Credibility, liyi framing and moral contention*

Credibility has been defined as ‘a measure of how actors perceive institutions as a jointly shared rule,’ with the proviso that the discussion of credibility is not about trust or legitimacy, and that the existence of conflict among people subject to particular institutions of a property regime does not necessarily diminish the credibility of these institutions.

‘Although credibility is undoubtedly related to distributional conflict, it does not posit that a “fully credible institution” – if that ever exists – would also be free from conflict. Instead, credibility assumes that distributional conflict is part and parcel of any property rights arrangement. Therefore, whereas legitimacy is perhaps more mono-dimensionally related to social conflict and discontent,

credibility by definition presupposes a wider array of indicators by which it could and should be measured.’ (Ho, 2014: 6)

The ‘credibility thesis’ reacts to the fact that conflict occurring within a particular institutional or regulatory framework may, if serious enough, detract from the social acceptance – or legitimacy -- of the rules governing the conflict. Even if it is not widely accepted or legitimate, a property system may still be credible, according to the credibility thesis. According to Ho, assessments of credibility rely on how they the institutions’ functions, not their forms or designs (Ho, 2014: 6) are perceived in society. Ho refrains from what in some disciplines would be characterised as ‘first order’ assessments of the right or wrong - the moral merits - of a particular institutional design or form (Richardson, 2013). This distinguishes credibility-based assessments from rights-based assessments.

Ho’s account reflects the complexity of varied individual experience and public discussion of evictions, of which some examples are provided in the following. These examples indicate, however, that in addition to distributional conflict, there can also be deeper discontent with some of the features of the current institutions of property law, leading to what in the following is termed normative contention over the institutions of property law and related social and government practices. While distributional conflict as such does not adversely affect the credibility or property institutions, the credibility thesis, as understood here, suggests that normative conflict (or contention) about property institutions can challenge the credibility of property institutions.¹⁰ Following this line of argument, it becomes important to determine whether, in the eviction contexts that are the basis of the present discussion, there is normative contention. As Ho points out, ‘[a]s illegal evictions are generally concentrated in the peri-urban areas – where the pressure on land is highest due to urban sprawl – it might also be at this locus where current institutions governing rural land will be *most challenged*.’ (Ho, 2014: 23, emphasis added) It seems important to add that challenges may also be intense in respect of urban land, i.e. land which according to the 1982 Constitution is already in state ownership when decisions to redevelop it are made.

Evictions and expropriations can leave evictees dispossessed and with compensation and/or resettlement arrangements they consider inadequate; the process of expropriation is coercive and in some cases involves threats of violence or actual violence; and attempts by evictees to protest perceived injustices can be blocked in various ways, problems that occur due to wider problems of the judicial institutions, such as their dependence on other party-state authorities. Conflict occurs at different levels – there are incidental clashes between evictees on one side and the Party-State and property developers on the other, for instance; but there is also contestation between the State’s and popular views (at times

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labelled ‘subversive’ by the authorities) of property rights. There is also significant social unrest linked to evictions.

Drawing on the domestic discourse surrounding expropriations and evictions, we can observe that mainstream, officially sanctioned social discourse consistently frames these practices as related to the distribution of economic/welfare interests, or *liyi*. The economically redistributive effects of expropriations and evictions are undeniably important, and it is thus no surprise that much discussion of State-citizen conflict in eviction contexts focuses on calculations of economic losses and gains. Arguments in specific cases often focus on discrepancies between compensation stipulated by government-set standards and actually paid compensation, as well as the price for which such land is acquired by developers. According to current legal rules, rural residents continue to be compensated not for the market value land will have once it becomes part of urban real estate, but instead for lost putative agricultural output (even in cases where land is no longer used as farmland);¹¹ while in urban areas, compensation is for the market value of the buildings but not the land taken from urban residents. Regardless of the by itself important debate as to whether such standards are adequate, research concluded that on average, the value of land taken was 40 times the amount of compensation actually paid, not taking into account the 40 percent of cases in which no compensation at all was paid. (Landesa, undated; Landesa, 2011) Individual cases studies support such findings in anecdotal ways;¹² they also suggest that compensation and resettlement tend to be withheld from recalcitrant evictees who protest; and that due to the legal requirements for governments to obtain individual households’ agreement (*xieyi*) accepting the compensation package offered to them, there can be a negotiation process about that package.

Not only State discourse, but also affected citizens themselves and lawyers who represent them often adopt the language of (economic, material) interest or *liyi* to describe these processes. Two lawyers with ample experience working on evictions and expropriations commented as follows on different occasions, for example.

‘In *chaiqian* cases it is really a matter of compensation amounts. And so the proper method and the lawyers’ attitudes will not be the same as in other matters. It is the same with the client. They want to maximize what they get.’(#2 2011-5)

And:

‘The ideal result is to create a system for *weiquan*; it is *not* to prevent *chaiqian* altogether in a particular place, but rather to make sure that there is a good system for compensation. For instance, in Qiqiha’er, they created a local regulation on compensation that benefits the people – they wait for the government to demolish

¹¹ Efforts are underway to reform compensation standards at the time of this writing. They have not yet led to legislative changes.

¹² In a case in Zigong, Sichuan (expropriation decision announce in 2002), the ratio was ca. 70:1 whereas in a more recent case in Hangzhou (decision announced in 2009) the ratio was ca. 23:1 (Pils, 2006; Pils, 2010).

their homes... Those who really don't want to leave are extremely few. The government usually finds some way of getting them to leave. These are issues of negotiation.' (#39 2012-1)¹³

We may describe the accounts above as '*liyi* framing:' a framing of conflict *exclusively* characterising it as related to economic loss and gain, or in terms of the distinction introduced earlier, as distributional conflict narrowly related to economic interest. As the above comments suggest, framing eviction and expropriation issues in this way means to analogise them with the market choices of *homines oeconomici* – of rational market actors with a preference for maximising 'interest', or for maximising income (such as compensation to be received and the value of resettlement arrangements) while minimising loss (such as compensation to be paid by urban governments to evictees and the expropriated).

The discourse of *liyi* would at first glance support the assessment that the institutions of property law and the wider legal system governing evictions and expropriations are credible, on the terms of the above definition. They seem credible if we analogise them with market-based bargains, following shared rules that are by and large accepted by the market participants. Implicitly, the mainstream discourse assumes that in these conflicts of interest, the solution lies in achieving the sort of balance that characterises desirable market transactions – or transactions that both sides of the bargain find acceptable. Seen in this way, focusing on distributional conflict to the exclusion of normative contention, the criterion of credibility would draw our attention to conventional developmental approaches, which are largely economic-utility-driven, focusing in at times patriotic and nationalist terms on the welfare of the whole nation, and at other times on utility benefits to individuals. In its economistic choice of vocabulary, indeed, the *liyi* discourse clearly reflects mainstream official justifications of the overall process of urbanisation as one justified by its contribution to economic growth and aggregate welfare increase. This is also used as an argument that supports *liyi* framing: it is pointed out that many citizens, especially those who belong to 'the system' (*tizhi*), benefit from these processes without having any direct part in them. Thus when the socio-legal scholar Professor Yu Jianrong's criticised a local government official for his involvement in violent *chaiqian*, the reply was:

"If we didn't do it like this, what would you intellectuals eat?" (Southern Metropolitan Daily, 2010; Li, 2010)¹⁴

Liyi framing of eviction and expropriation disputes presupposes that there are *shared* rules which actors use to resolve their conflicts of interest. So far as such framing affects social perception (the discussion above has provided some anecdotal evidence that it does), it may result in the reassuring belief that the institutions and practices of the Party-State are a navigable process, as long as one understands how to use the rules. Again, this

¹³ For a discussion of strategies in eviction cases see also Zheng and Cang (2010).

¹⁴ The exchange ended in Yu Jianrong's reportedly hitting the Party Secretary in anger. The original weibo (microblog) comment as such is no longer available.

approach supports the conclusion that the current institutions of property, expropriation and eviction have some credibility, understood as ‘a measure of how actors perceive institutions as a jointly shared rule.’

However, counter-discourses, initiated primarily by evictees, lawyers, and academics challenge this way of framing conflict, instead drawing on concepts such as that of injustice, dignity and redress for injustice. The challengers’ complaints and arguments suggest that far from being exclusively about monetarily measurable loss, they raise a wide range of issues, discussed at greater length in the following section. One such issue is that evictees have very limited say in the process terminating in their removal. A second issue is that evictions can be accompanied by threats of violence and actual violence. Both of these two issues clearly point to contention far deeper than conflict about economic gains and losses. Yet official and mainstream discourse tends to frame conflict as related to *liyi* even where this is *prima facie* implausible. Thus, the self-immolation of Tang Fuzhen in Chengdu in 2010 reportedly led an official involved in the handling of her case to comment that she had ‘put personal interests above the public interest.’ Countering the suggestion that eviction and expropriation conflict was just about *liyi*, a lawyer said,

‘These issues do not merely concern *liyi*, they do not merely have to do with money. They directly concern the right to speak (*huayuquan*)...’ (# 2014-1)¹⁵

And, in the case of Tang Fuzhen, the woman who protested by self-immolation, Yu Jianrong commented on the official who criticised Tang:

‘He appears to believe that the public interest is more important than personal interests, and perceives Tang Fuzhen's defense of her rights as opposition to the law, from which he uses Tang's “immoral” and “unlawful” conduct to assert the correctness of his own.” ... “Social bifurcation¹⁶ has already provided a mental construct of “us” and “them,” and the classification of individuals results in a lack of sympathy that strips “them” of their humanity..’ (Yu, 2014: 52-3)

As the lawyer quoted above with sceptical comments about *liyi* framing points out, the true scope of such extreme forms of protest and violence cannot even be known in current circumstances, because the news of violent incidents in the context of evictions and expropriations is suppressed wherever possible. The lawyer added, giving examples, that local government would both try to pay money to households in which such cases had happened, and take further violent measures against them, to suppress reporting (#6 2014-1).

What are the implications of such findings for the credibility thesis? The above discussion has suggested that the mainstream, largely utilitarian discourse can run into a

¹⁵ This lawyer continued to comment that ‘the government uses violent demolition and relocation, because that helps them bring up the GDP. It’s a very simple logic.’ (# 2014-1)

¹⁶ Liberals like Professor Jiang Ping have criticized property law on this account (Chen Min 2005).

number of problems. Its focus on economic aspects leads to inattention to certain aspects of what happens in expropriations and evictions – the experience of ‘lack of say,’ threats, and violence were mentioned as examples. Discourse critical of the mainstream, on the other hand, is affected by censorship, which suppresses facts the government does not want to be reported, and reduces the impact alternative views can make on public discussion and (consequently) social perceptions of the institutions under discussion here. In fact, as the discussion of counter-discourses has shown, there are views fundamentally rejecting the existing institutions on account of their unfairness, denial of access to justice, and violence-proneness, even though political conditions make it difficult and risky to articulate and exchange such views.

In sum, from the perspective of the present analysis, conflict over land cannot be understood merely as distributional conflict; and ‘credibility’ as defined by the credibility thesis is most seriously threatened by normative contention over the property institutions that regulate access to and control over land. Normative contention observed in rural or semi-rural, as well as urban contexts suggests that, somewhat contrary to what proponents of the credibility thesis seems to argue, the institutions of property might be not ‘credible,’ because of the intense normative contention they give rise to. Such contention can be observed, but it is not fully public, because the government suppresses critical voices. According to this analysis, the criterion of credibility remains important because it draws attention to the complexity of individual experience and public discussion of evictions, and argues persuasively that a ‘fully credible’ system (or a system consistently ‘fully credible’ over a long period of time) would be unlikely in any particular time and place of assessment. The social perceptions of a moment could change the next moment; and a particular system’s institutions might give a superficial impression of being ‘credible’ institutions in society due to the suppression of critical voices, but turn out to lack credibility on further scrutiny.¹⁷ It is on the basis of these critical observations that the following section examines the advantages of a rights-centred (liberal) assessment of the regime of rules and practices governing evictions and expropriations.

3) *China’s rights-centred discourse*

Even though social contention over evictions and expropriations may be framed in the detached language of mainstream economics (*liyi*), a centrally important and basic question in public discourse about evictions is whether, or to what extent, the current rules and their operation in practice can be justified. This is a straightforwardly normative, moral and legal question.

One answer to this question was, as noted earlier, to set aside concerns about individual harm or loss by pointing to the (alleged) contribution of urbanisation, and of the property regime that has enabled urbanisation, to national economic growth. Evictees and their

¹⁷ Ho acknowledges that the Credibility Thesis’ methodology in deciding which empirical data are to be used as significant, and which to be discarded as insignificant is important.

lawyers are of course opposed to this utilitarian line of argument. They have numerous interrelated complaints. Evictees have limited say in the process terminating in their removal. Attempts to challenge government decisions to demolish and relocate or to take their farmland can generally at best get them better compensation. Those who seek the protection of the law against an eviction decision may find that courts refuse to admit complaints in administrative or civil litigation on a variety of grounds, or no grounds at all; when they take a case, they tend to narrow down the scope of their review to the issue of compensation (not that of the legality of an expropriation or demolition as such), and litigation may not stay execution orders for demolition.¹⁸ A decision awarding more compensation may still be difficult to enforce. Those who seek protection through the petitioning (*xinfang* or 'letters and visits') system, on the other hand, may fare no better, due to the petitioning system's in-built dysfunctionalities and iniquities. (Minzner, 2006). In addition, evictions can be accompanied by threats of violence and actual violence. These occur, first, when the government 'negotiates' compensation and resettlement with evictees, because there is a legal requirement to secure 'agreements,' which creates an incentive to put evictees under pressure to sign. When no agreement is secured, second, forceful eviction can take place and implementing forced eviction orders can involve further violence.¹⁹

Those who engage in normative contention with the state resort to different vocabularies to protest these iniquities. Primarily, they use the written, explicit rules of State laws and regulations when the government has violated these, engaging in *weiquan* or the defence of their rights. They thus rely on the rights, rules and broader principles of law mentioned at the outset of this paper, including property rights, social and economic rights, as well as central civil and political rights including the right of liberty of the person and the right to free speech. Additionally, sometimes, evictees also assert broader claims of ownership rights not fully supported by these laws and regulations; and in asserting their human rights, they sometimes clearly and consciously articulate broader demands for legal and political change. And lastly, evictees also take recourse to the tradition of submitting grievances and remonstrating about injustices (*shen yuan*), partly through the 'letters and visits' or petitioning offices. It is especially in the latter two contexts that protest and rights defence challenge the predominant, mainstream discourse, by rejecting the bargaining-, game- and interest-related vocabulary which the mainstream promotes.

¹⁸ The Supreme People's Court Urgent Notice on Resolutely Preventing Land Expropriations and Building Demolitions From Triggering Bad Incidents merely advises that 'in principle,' 'advance enforcement' of forced demolition orders ought not to be approved in cases where a case against the expropriation or demolition has already been filed, and that approval must only be given with approval from the next-higher ranking court. SPC Notice, 2011; SPC Answer, 2013; Radio Free Asia, 2013.

¹⁹ International human rights organisations and domestic entities have tried to document some of the cases of violence; but there is no comprehensive record (Amnesty International, 2012; CHRD, 2014; He, 2010; Chin, 2010). The fact that state rules explicitly prohibit violence is by itself telling. Article 27 of the 2011 State Council Regulation on expropriation of and compensation for buildings on state-owned land, for example, states: 'No unit or individual may compel the owner to relocate through violence, threat or other illegal means such as suspension of water, heat, gas, power supply and road access in violation of the regulations. Construction units shall be prohibited from participating in relocation activities.' (State Council Regulation, 2011)

In urban contexts, evictees and their advocates have, for example, described their experience as ‘robbery’ and ‘invasion.’ To quote a human rights lawyer commenting on urban demolitions,

‘What is called demolition and relocation in China occurs in the name of the state, but is actually carried out by individual officials and institutions within the government, along with property developers and including the many people they hire. They make up an interest group of big and small beneficiaries. What you see is superficially the carrying out of ‘demolition and relocation’, but essentially they’re robber bands. In essence, what they commit is robbery’ (He, 2010)

Protesters such as urban evictee Ni Yulan, have spoken of forced demolition in terms of ‘white terror’ and warfare’ (He 2010) Urban eviction advocates such as Hua Xinmin argue that the 1982 Constitution failed to destroy private ownership in urban land as there was no clear or fair procedure governing State expropriation, which happened, from her perspective, by constitutional *fiat* and without being properly announced or explained to the population affected by it (Hua, 2011; Zhou, 2012). In the countryside where, as noted, a different set of rules governs land tenure, residents have also challenged land takings and evictions in ways exceeding the use of the state-set-rules, for example by references to the dignity of the Constitution, the privacy of the home, the right to equality before the law; housing rights, and liberal precepts such as ‘the storm and rain may enter but the Emperor may not.’ (Pils, 2010) In all of these contexts, references to the concepts of human rights and dignity are common.

In some cases, challenges have involved explicit opposition to the basic design of the Chinese property regime, in particular, the principle that all land is in public ownership, established by Article 10 of the Constitution and further laws and regulations. For example, shortly after enactment of the 2007 Property Rights Law, some rural land ownership declarations asserted rights of private rural land ownership exceeding the definition of collective ownership of rural land that underlies the Property Rights Law, Land Administration Law, and the Constitution (Pils, 2008). Similarly, when a widely land conflict flared up in the village of Wukan in Guangdong in 2011 and 2012, the villagers’ demands for return of ‘their’ land and better self-governance reflected assertive attitudes, even as the legality of the process that had led to some of the land being taken remained unclear. Land -grab protests in various locations have also used slogans such as ‘Return Our Land So We Can Live!’ (Stewart, 2011) References to ‘the government selling our land’ or ‘forcibly selling our land’ reflect similar, if less explicit, opposition to the extant property regime, and are more common. To give an example, an evictee petitioner placard used in 2007 read

‘Unlawful *chaiqian* is legally and morally unacceptable...How can it be that if another person wants my things and I don’t want to give them to him, it means that I am breaking the law?’ (Evictee protest pictures, 2007)

Overall, the substance of evictee protest as described above can be seen to use conceptions of rights critical of public control of land, and opposed to the official and mainstream justifications of takings outlined in earlier sections of this chapter. Their arguments try to strengthen private control over access to and use of property, at times in direct contradiction with the principle of socialist public ownership that the Party-State continues to propagate.

It is not only the substance of their arguments that renders evictee protest challenging to State authorities. It can also be their form. Evictees advance their arguments through a variety of channels, including the courts, the petitioning of ‘letters and visits’ system, and online and offline public expression such as placards, banners and slogans displayed or shouted at protests and social media posts. All of these channels offer opportunities for questioning the authority of the party-state as a law enforcer, a judicial decision-maker, and a source of rules and norms expected to be followed. In judicial settings, for example, evictee complainants can find many ways of challenging party-state illegal conduct. Thus, a rights lawyer explained that lawyers were training lay rights defenders to engage in courtroom advocacy (#6 2014-1). These rights defenders, he said, now used complaints about unlawful police conduct; complaints about judges not accepting cases and trying to pack courtrooms to prevent sympathetic citizens from attending hearings in eviction cases; applications for the dismissal of judges for dereliction of their duties by the People’s Congresses, and so-called ‘audience views’ (*pangting yijianshu*) submitted to courts’ and judges’ ‘superior levels.’ As a result,

‘Gradually, the judges learned to behave (*manman xueguaile*).’(#6 2014-1)

But evictee complainants can also turn trial hearings in cases concerning their fellow petitioners into raucous spectacles of protest by supporters of the litigant assembled in-or outside the courtroom. Similarly, the practice of petitioning to the authorities, while widely regarded as less confrontational and inherently supplicant, as it involves imploring a right-minded official for help, can also take quite confrontational forms in practice, for example, when petitioners kneel to block a government entrance or a road to a construction site (Pils 2011).

Both in substance and in form, then, evictee protest reveals the inherently political and deeply contested nature of some eviction and expropriation conflicts, and the centrality of rights discourse in challenging the system. Having said this it should also be noted that those who challenge the rules on normative grounds are aware that doing so may pose risks; and try to minimise the risks by toning down their message. For example, the just quoted lawyer, acknowledging that the authorities regarded certain kinds of ‘rights defence’ as contrary to public order or even as politically subversive, explained,

‘Of course I tell them [my evictee clients] to say, “we’re only fighting for our interests here when defending our rights. We have no political goals”’; (6 2014-1)

In fact, the lawyer added, rights defence in areas designated as ‘sensitive’ by the authorities is inherently and inevitably political, both in terms of its content and its strategies.

Relatively few evictee protesters choose open defiance of the authorities. One evictee rights defender, for example, detailed that she was able to coordinate hundreds of people to come at short notice to attend ongoing forced demolitions in so called surround-and-watch (*weiguan*) actions in rural Beijing, as early as in 2011. (#51 2011-2) And in 2014, at an informal seminar to discuss the case of an evictee who had stabbed two eviction team members, apparently in self-defence, as well as some other evictions cases together with evictees, rights defenders, lawyers, scholars, and reporters, one of the organisers stated that one goal of the seminar should be to

‘...analyse, on the basis of China’s urbanisation, whether the conduct of the [government] is right or wrong, whether this system of ours is a good or bad one; for we know that such conduct [in forced evictions] reflects the state’s goals and we can judge from that whether the goal pursued by this state is a legitimate one or not.’ (Boxun, 2014)

A participating scholar related the problem of mass evictions to a widespread lack, as he understood it, of a ‘sense of security’ in Chinese society; and another remarked,

‘We are all members of one society whose fates are intimately connected; we must change our attitude, we must care. If today you don’t care about this case, then perhaps tragedy will strike you tomorrow.’ (Boxun, 2014)

Expressions of concern and protest like these may not be frequent – due to censorship and other obstacles, it is not possible to gain quantitative insight into how frequent they are – but they have an important political function and significance. They may serve to strengthen an incipient, more explicitly political opposition to the government.

In sum, the picture that emerges from systematic considerations, institutional problems, and anecdotal accounts of those who have experienced the urbanisation process as evictees or evictee lawyers in the preceding discussion indicates strongly that some of the most vocal and most intensely normative contention over China’s property regime is rights-centred. It uses the language of rights and (in)justice, and it engages directly with the legitimacy of the rules, principles, and other considerations guiding the party-states eviction and expropriation practices. It is, at least in part, highly critical of these practices, most acutely so when it challenges the efficiency-centred logic of the state that purports to justify all expropriations and demolitions, as long as they serve the purpose of ‘development’ understood in the broadest possible manner.

Conclusion

An analysis of mainstream discourse, identified as being focused on the ideas of economic interest and bargaining on the basis of the ‘credibility thesis’ can help understand the current viability and relative stability of expropriation and eviction processes. It can help understand why these processes appear to have some credibility in the eyes of many in China.

Yet, according to the view taken here, an assessment of the rules and practices governing evictions and expropriations requires substantive engagement with the legal arguments about these practices, as State decisions coercively to take property, especially land and housing, from current occupants require legal justification. The rights-centred discourse discussed in the last section of this paper has in common with efficient-growth-oriented utilitarian accounts that it directly addresses the problem of justification. In contrast to the predominant growth doctrine however, it interprets the existing system in light of how it is used and viewed by those it affects; and to that extent it is indebted to the credibility-focused account.

Drawing on the arguments and strategies of evictee protesters, it was shown that some of these evictees have engaged in principled and comprehensive criticism of expropriation practices, as well as in forms of advocacy and resistance far exceeding mere negotiations for a better *chaiqian* ‘deal.’ Their protest and resistance also remind us that the justifications of legal and political institutions are interdependent – for example, the protection of evictees’ rights is dependent on their ability to criticise the government. This urges the conclusion that, in a situation of vocal evictee activism despite risks of serious persecution, the existing system for expropriations and evictions is set to remain deeply contested, challenged, and fragile.

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